



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 23, 2023

IN THE MATTER OF:

Appeal Board No. 629009

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 629006, 629007, 629008, 629009, 629010, 629011, 629012, 629013 and 629014, the Appeal Board, on its motion pursuant to Labor Law § 620

(3), has reopened and reconsidered the Judge's decisions, filed February 3, 2023, that granted the claimant's application to reopen the default decisions of the Administrative Law Judge, filed November 28, 2022, and sustained the initial determinations holding the claimant ineligible to receive benefits, effective July 1, 2013 through May 1, 2016, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation; charging the claimant with an overpayment of \$13,981 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive

future benefits by 352 effective days and charging a civil penalty of \$2,097.15 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for employer herein as a school bus driver. In 2013, she worked two days for the week ending July 7; one day for the week ending July 21; and two days for each of the weeks ending July 28 and

December 29. She also earned \$503.52 (over the statutory limit of \$405) for the week ending December 29. In 2014, she worked two days for the week ending January 5; four or more days for each of the weeks ending January 12, March 2, 9, April 13; two days for the week ending April 20; four or more days for each of the weeks ending April 27, June 29, September 7, 28, October 5, 12, 19, 26, November 2 and 9; and three days for the week ending December 28. In 2015, she worked four or more days for each of the weeks ending January 4 and 11; three days for the week ending January 18; four or more days for each of the weeks ending January 25, February 1 and 8; three days for the week ending April 12; two days for each of the weeks ending July 19, August 9 and 16; one day for the week ending August 30; four or more days for each of the weeks ending September 6 and 13; one day for the week ending September 20; and four or more days for each of the weeks ending September 27 and October 4. She also earned \$505.75 for the week ending January 18 and \$449.82 for the week ending April 12 (over the statutory limit of \$425). In 2016, she worked four or more days for each of the weeks ending January 3, 17, 24, and 31; and two days for the week ending May 1. She earned \$575.57 (over the statutory limit of \$430) for the week ending May 1. She did not work during the week ending February 21, as school was closed during Presidents' week.

When she certified for benefits, she was asked whether she worked and whether she earned over the statutory limitation. She reported two days of work for the weeks ending April 13 and June 29, 2014, and one day of work for the week ending December 28, 2014. For the rest of the weeks at issue, she reported zero days of work. For the weeks ending December 29, 2013, January 18 and April 12, 2015, and May 1, 2016, she reported that she had not earned over the statutory limitation. She received \$13,981 in benefits.

The claimant did not appear at the November 28, 2022 hearing because she was working. On January 4, 2023, she applied to reopen the default decisions.

**OPINION:** The credible evidence establishes that the claimant did not appear at the prior hearing because she was working. Accordingly, we conclude the claimant has established good cause for her failure to appear.

The credible evidence further establishes that the claimant worked during the weeks at issue, with the exception of the week ending February 21, 2016 when school was closed. The evidence further establishes that the claimant earned over the statutory limit for the four weeks at issue. Accordingly, we further conclude that the claimant was not totally unemployed, except for the week

ending February 21, 2016, and she was ineligible to receive benefits.

As she was ineligible, she was overpaid the benefits that she had received with the exception of the week ending February 21, 2016. As she underreported the days that she worked and stated that she had not earned over the statutory limitation for the four weeks at issue, her statements were factually false. Accordingly, we further conclude that the overpaid benefits are recoverable.

Further, as the claimant was aware that she had worked during the period at issue, with the exception of the week ending February 21, 2016, and was aware that she had earned over the statutory limitation for the four weeks at issue, we further conclude that the claimant made willful misrepresentations to obtain benefits and that she is subject to forfeit and civil penalties.

The amounts of the recoverable overpayment, forfeit and civil penalties are referred back to the Department of recalculation in accordance with the decisions.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

The claimant's application to reopen the November 28, 2022 default decisions is granted.

In Appeal Board Nos. 629006, 629009, and 629012, the initial determination, holding the claimant ineligible to receive benefits, effective July 1, 2013 through May 1, 2016, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, is modified to be exclude the week ending, February 21, 2016, and, as so modified, is sustained.

In Appeal Board Nos. 629007, 629010, and 629013, the initial determination, charging the claimant with an overpayment of \$13,981 in benefits recoverable pursuant to Labor Law § 597 (4), is modified to reflect that the claimant was

not overpaid benefits for the week ending, February 21, 2016, and, as so modified, is sustained.

In Appeal Board Nos. 629008, 629011, and 629014, the initial determination, reducing the claimant's right to receive future benefits by 352 effective days and charging a civil penalty of \$2,097.15 on the basis that the claimant made

willful misrepresentations to obtain benefits, is modified to reflect that the claimant did not make a willful misrepresentation for the week ending, February 21, 2016, and, as so modified, is sustained.

The amounts of the recoverable overpayment, forfeit and civil penalties are referred back to the Department of recalculation in accordance with the decisions.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER